

## Agricultural Marketing Service, USDA

## §81.8

under this program to any eligible producer of prune/plums who complies with the requirements in §81.8 and all other terms and conditions in this part.

(b) If applications for participation in the program authorized by this part exceed \$17,000,000, less administration costs, the Committee will approve the applications (subject to the requirements in §81.8) in the order in which the completed applications are received in the Committee office up to the funding limit of \$17,000,000, less administration costs, for the program. Any additional applications will be denied.

(c) The Administrator or his delegatee may set other conditions for payment, in addition to those provided for in this part, to the extent necessary to accomplish the goals of the program.

### **§81.8 Application and approval for participation.**

(a) Applications will be reviewed for program compliance and approved or disapproved by Committee office personnel.

(b) Applications for participation in the Prune-Plum Diversion Program can be obtained from the Committee office at 3841 North Freeway Boulevard, Suite 120, Sacramento, California 95834; telephone (916) 565-6235.

(c) Any producer desiring to participate in the prune-plum diversion program must have filed an application with the Committee by January 31, 2002. The application shall be accompanied by a copy of any two of the following four documents: Plat Map from the County Hall of Records; Irrigation Tax Bill; County Property Tax Bill; or any other documents containing an Assessor's Parcel Number. Such application shall include at least the following information:

(1) The name, address, telephone number and tax identification number/social security number of the producer;

(2) The location and size of the production unit to be diverted;

(3) The prune/plum production from the orchard or portion of the orchard to be diverted during the 1999-2000 and 2000-2001 seasons;

(4) A statement that all persons with an equity interest in the prune/plums in the production unit to be diverted consent to the filing of the application. That is, the statement must show that the applicant has clear title to the property in question, and/or as needed, the statement must show an agreement to participate in the tree removal program from all lien or mortgage holders, and/or land owners, lessors, or similar parties with an interest in the property to the extent demanded by AMS or to the extent that such persons could object to the tree removal. However, obtaining such assent shall be the responsibility of the applicant who shall alone bear any responsibilities which may extend to third parties;

(5) A statement that the applicant agrees to comply with all of the regulations established for the prune/plum diversion program;

(6) A certification that the information contained in the application is true and correct;

(7) The year that the unit of prune/plums was planted;

(8) An identification of the handler(s) who received the prune/plums from the producer in the last two years.

(d) After the Committee receives the producer applications, it shall review them to determine whether all the required information has been provided and that the information appears reliable.

(e) As previously indicated, if the number of trees to be removed in such applications, multiplied by \$8.50 per tree, exceeds the amount of funds available for the diversion program, each grower's application will be considered in the order in which they are received at the Committee office. AMS may reject any application for any reason, and its decisions are final.

(f) After the application reviews and confirmation of eligible trees are completed, the Committee shall notify the applicant, in writing, as to whether or not the application has been approved and the number of trees approved for payment after removal. If an application is not approved, the notification

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shall specify the reason(s) for disapproval. AMS shall be the final arbiter of which applications may be approved or rejected, and the final arbiter of any appeal.

### **§ 81.9 Inspection and certification of diversion.**

When the removal of the prune-plum trees is complete, the producer(s) will notify the Committee on a form provided by the Committee. The Committee will certify that the trees approved for removal from the block or orchard, as the case may be, have been removed, and notify AMS.

### **§ 81.10 Claim for payment.**

(a) To obtain payment for the trees removed, the producer must submit to the Committee by June 30, 2002, a completed form provided by the Committee. Such form shall include the Committee's certification that the qualifying trees from the blocks or orchards have been removed. If all other conditions for payment are met, AMS will then issue a check to the producer in the amount of \$8.50 per eligible tree removed.

(b) [Reserved]

### **§ 81.11 Compliance with program provisions.**

If USDA on its own, or on the advice of the Committee, determines that any provision of this part have not been complied with by the producer, the producer will not be entitled to diversion payments in connection with tree removal. If a producer does not comply with the terms of this part, including the requirement specified in § 81.5(b), the producer must refund, with interest, any USDA payment made in connection with such tree removal, and will also be liable to USDA for any other damages incurred as a result of such failure. The Committee or USDA may deny any producer the right to participate in this program or the right to receive or retain payments in connection with any diversion previously made under this program, or both, if the Committee or USDA determines that:

(a) The producer has failed to properly remove the prune/plum trees from the applicable block or the whole or-

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chard regardless of whether such failure was caused directly by the producer or by any other person or persons;

(b) The producer has not acted in good faith in connection with any activity under this program; or

(c) The producer has failed to discharge fully any obligation assumed by, or charged to, him or her under this program.

### **§ 81.12 Inspection of premises.**

The producer must permit authorized representatives of USDA or the Committee, at any reasonable time, to have access to their premises to inspect and examine the orchard block where trees were removed and records pertaining to the orchard to determine compliance with the provisions of this part.

### **§ 81.13 Records and accounts.**

(a) The producers participating in this program must keep accurate records and accounts showing the details relative to the prune/plum tree removal, including the contract entered into with the firm or person removing the trees, as well as the invoices.

(b) The producers must permit authorized representatives of USDA, the Committee, and the General Accounting Office, or their delegates, at any reasonable time to inspect, examine, and make copies of such records and accounts to determine compliance with provisions of this part. Such records and accounts must be retained for two years after the date of payment to the producer under the program, or for two years after the date of any audit of records by USDA, whichever is later. Any destruction of records by the producer at any time will be at the risk of the producer when there is reason to know, believe, or suspect that matters may be or could be in dispute or remain in dispute.

### **§ 81.14 Offset, assignment, and prompt payment.**

(a) Any payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien against the crop proceeds thereof in favor of the